IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12093 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JITENDRA P SONDARVA

Versus

UNION OF INDIA

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Appearance:

1. Special Civil Application No. 12093 of 2000

MR MD RANA for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1

MR UI VYAS for Respondent No.2

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/10/2001

ORAL JUDGEMENT

#. Rule. Mr.Shah and Mr.Vyas waive service of rule for respondent nos.1 and 2 respectively. With the consent of the parties, the matter is taken up for final hearing

today.

#. The petitioner has challenged the order at Annexure-B by which the Government refused to refer the matter to the appropriate court under the Industrial Disputes Act on the ground that the claim of the petitioner is stale one and that the dispute has been raised belatedly after the period of more than 10 years without any justified reasons for delay.

#. It is the say of the petitioner that, he was serving between 1.3.1982 to 15.7.1982 and thereafter from 16.8.1982 upto the oral order of termination and that his services were terminated by oral order on 1.1.1984. The petitioner has averred in paragraph 3 of the petition as under :

> "After the termination the reference was sought to be made being Reference No.628/84 before the Labour Court, Rajkot which Reference was ultimately transferred to the newly created Labour Court at Junagadh bearing Reference No.170/90. The Hon'ble Labour Court on 6th of August, 1991 rejected the Reference as it was held that it has no jurisdiction. This was so because the respondent authority is a Central Govt. limb getting grant from Central Government."

The failure report of the Conciliation Officer is also produced at Annexure-A - page 11. In the said report also, there is a reference about the proceedings which were initiated before the Labour Court, Junagadh and it seems that since it was found that the Court had no jurisdiction, the said reference was not entertained by the Labour Court at the relevant time.

#. The aforesaid aspect seems to have not taken into consideration by the Government at the time of taking the decision at Annexure-B dated 28.12.1994. Mr.Rana for the petitioner submitted that, appropriate reasons were given even in the report of the Conciliation Officer by which it can be presumed that the aforesaid period in question can be said to have been explained by the petitioner. The aforesaid aspect is not taken into consideration while rejecting the prayer of the petitioner for referring the matter to the appropriate court under the Industrial Disputes Act. The dispute is not referred solely on the ground that there is a delay of 10 years and that there is no justification given for such delay. However, the aforesaid aspect of pendency of the

proceedings before another Labour Court etc. is not taken into consideration. If that period is taken into consideration then the period of delay would not be of 10 years and it would be on lesser side. The authority is required to take into consideration the aforesaid aspect. Since that has not been taken into consideration, the matter is remanded back to the competent authority for taking a decision afresh to the effect whether the dispute in question is required to be referred to the appropriate court under the provisions of the Industrial Disputes Act.

#. In view of the aforesaid discussion, the petition is partly allowed. The decision at Annexure-B dated 28.12.1994 is quashed and set aside. The authority is directed to take a fresh decision after considering the averments made in the report of the Conciliation Officer by which the reference is made about certain proceedings which were pending before the Labour Court. Thereafter, the authority may consider whether the dispute is required to be referred to the appropriate court under the Industrial Disputes Act or not and whether there is a delay and if there is delay, the same is upto what extent. It will be open for the petitioner to explain the delay by submitting the appropriate application to the competent authority.

Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)